

## **ZONING BOARD OF APPEALS MINUTES**

July 8, 2014 – Regular Meeting  
Delta Township Administration Building

### **I CALL TO ORDER**

Vice Chairman Newman called the meeting to order.

### **II PLEDGE OF ALLEGIANCE**

Vice Chairman Newman led the Board and others present in reciting the Pledge of Allegiance to the Flag.

### **III ROLL CALL**

Members Present: Arking, Barnhart, Laforet, Newman, and Parr.

Members Absent: Hicks and Reed - excused

Others Present: Chris Gruba, Assistant Planner

### **IV SET AND ADJUST AGENDA**

There were no changes to the agenda.

### **V APPROVAL OF MINUTES**

#### **1. June 10, 2014 Regular Meeting Minutes**

**MOTION BY LAFORET, SECONDED BY BARNHART, THAT THE MINUTES OF THE JUNE 10, 2014 REGULAR MEETING OF THE ZONING BOARD OF APPEALS BE APPROVE AS PRESENTED. VOICE VOTE. CARRIED 5-0.**

### **VI OLD BUSINESS - None**

### **VII NEW BUSINESS**

#### **1. CASE NO. V-14-3-13: Ms. Shirley Ellis, requesting a setback variance for a front porch at her residence at 434 Theo Avenue per Section 3.7.0 B of the Zoning Ordinance.**

Mr. Gruba said in June, the Planning Department received an anonymous phone call

## **ZONING BOARD OF APPEALS REGULAR MEETING OF JULY 8, 2014 P. 2**

alleging that a porch was being constructed within the required front yard setback. He said staff performed a site inspection and found that the porch was in the process of being constructed within the required front yard setback. Mr. Gruba said the required front setback within the RC, Moderate Density Residential, zoning district is 30 feet. He noted that most of the houses along Theo Avenue did not meet the required 30 foot front yard setback and that the house located on the subject parcel was setback 27 feet from the property line. Mr. Gruba pointed out that Section 3.6.0 of the Zoning Ordinance allowed a front setback to be determined by taking the average setback of homes along the same side of the street with 200 feet to the south and to the north. He said in this case, the required front yard setback was actually 27 feet and not 30 feet. Mr. Gruba noted that the proposed front porch was permitted to extend eight feet into the required front yard setback thus requiring the front porch to be setback at least 19 feet from the front property line. He noted that at the present time, the proposed porch was setback 16 feet from the front property line. Mr. Gruba noted that staff had spoken to the property owners and asked them to stop work on the front porch, modify the design of the porch, or apply for a variance. He said subsequently, the property owner filed a variance request which was before the Board this evening. He noted that staff had not received any correspondence regarding the variance request and that the porch met all of the other applicable Zoning Ordinance requirements. Mr. Gruba noted that the property owner's husband, Mike Ellis, was vision impaired and was constructing the front porch to accommodate a ramp to make accessibility to the home easier. Mr. Gruba said it was his understanding that Mr. Ellis did not live in the home at this time, but that he planned on living in the home in the future.

Mr. Barnhart questioned if the porch would have a roof.

Mr. Gruba said the applicant would be able to better address his question.

Mr. Arking asked if similar variances had been granted along Theo Avenue.

Mr. Gruba said there had not been similar variances granted along Theo Avenue.

Ms. Laforet asked if there had been similar variances granted within the Township.

Mr. Gruba said he wasn't aware of similar variances that had been granted within the Township.

Ms. Laforet asked if there were other areas that didn't meet the front yard setback requirements when the homes were built.

Mr. Gruba said most of the homes along Theo Avenue didn't meet today's front yard setback requirements because of when they were built and that there were probably encroachments into the front yard setback area.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF JULY 8, 2014 P. 3**

Mike Ellis, 505 Geraldine, said he was present this evening on behalf of his wife, Shirley Ellis. Mr. Ellis said they purchased the home in 2012 and have been making improvements to the property over time. Mr. Ellis noted that the family who lived in the home had a lot of medical issues and that in the Spring of 2013, 911 County Public Services visited the home and informed them that the porch needed to be rebuilt in order to improve accessibility for emergency personnel. Mr. Ellis said when they laid out the porch; they used the outside of the sidewalk thinking that it would line up with the existing sidewalk without extending into the front lawn. Mr. Ellis stated that he was vision and hearing impaired and that they wanted to built a ramp that connected to the sidewalk and driveway in order to improve accessibility for his wife and himself when they moved into the home.

Ms. Parr asked when the Ellis' planned on moving into the home.

Shirley Ellis, 5035 Geraldine, said until she couldn't climb the stairs anymore in her two-story house, they would not be moving into the home on Theo anytime soon.

Ms. Parr asked if the home was a rental.

Ms. Ellis said she didn't charge the gentleman who lived in the home.

Mr. Barnhart asked if the porch would be covered similar to the porch located next door.

Ms. Ellis said the porch would not be covered.

Ms. Laforet questioned who occupied the home at the present time.

Ms. Ellis said her son lived in the home with his children.

Ms. Laforet asked why 911 requested that the porch be rebuilt.

Mr. Ellis said there were two very dilapidated steps and that 911 had requested a landing be constructed.

Ms. Laforet asked what brought the home to the attention of 911.

Mr. Ellis said the problem was brought to the attention of 911 when a call was made to the home for his granddaughter who was a severe diabetic, as well as a 911 visit for his grandson who had an asthmatic attack. He noted that 911 had suggested that accessibility be improved to the home.

Mr. Ellis felt they had met the four basic criteria for granting a variance due to the fact that they were not causing a public hazard or a nuisance and that what they were

## **ZONING BOARD OF APPEALS REGULAR MEETING OF JULY 8, 2014 P. 4**

requesting was not in violation of the guidelines for granting a variance. He felt they had met one of the special conditions for granting a variance due to their medical needs.

Mr. Newman questioned whether the American's Disability Act would have precedence over the variance since the porch wasn't being constructed for cosmetic reasons, but rather for better accessibility to the home for the disabled.

Mr. Gruba said the American's Disability Act required a ramp with a slope not over 1 to 12 which would be exempt from the Township's zoning requirements.

Mr. Newman said the applicant had mentioned that the porch was being constructed in order to make the construction of a ramp easier in the future.

Mr. Gruba noted that staff had not received any building plans for a ramp, but if a ramp was constructed in compliance with ADA requirements, a variance would not be required.

Mr. Newman asked if there was anyone in the audience who would like to speak on this request.

Tom Milan, 430 Theo, stated that this was the second project the applicant had made to the home without getting the proper permits. Mr. Milan noted that the first project was the construction of a roof over a stairway going into the basement of the house and based on that project, he became concerned about what would happen with the construction of the porch due to the fact that the roof had never been shingled or painted. Mr. Milan was also concerned that if a roof was constructed over the porch, it would obscure his view.

Janet Milan, 430 Theo, said she had lived in her home for 47 years and her neighbors to the south had constructed a front porch, as well as six other homeowners along her street over the years, all of which complied with the Township's requirements. Ms. Milan said she didn't know why the applicant didn't construct the porch straight across the front of the house that would have been in direct alignment with the three other porches on her side of the street. Ms. Milan didn't feel the applicant wanted to be neighbor friendly. She noted that the side yard awning the applicant had constructed without obtaining a permit was very unsightly and had deteriorated over the years due to the fact that it had never been shingled.

Lyle Leatherbery, 533 Theo, said when he wanted to build a deck, he would have had to "jump through hoops" in order to comply with the Township's requirements which he decided to delay at this time. However, Mr. Leatherbery said what he was hearing this evening was that the Township's requirements were just suggestions and that property owners could go ahead and start constructing a porch and then request a variance that made it ok. Mr. Leatherbery said he didn't operate that way and he felt you should play

## **ZONING BOARD OF APPEALS REGULAR MEETING OF JULY 8, 2014 P. 5**

by the rules. He felt Theo Avenue was a nice looking neighborhood and that the residents were proud of their homes. Mr. Leatherbery didn't feel there should be anonymous phone calls to the Township and he questioned whether the Township had a code enforcement officer.

Mr. Gruba said the Township had a code enforcement officer.

Mr. Leatherbery didn't feel this evening's request should have ever transpired and that the structure on the south side of the applicant's home should have never been built without obtaining the proper permits.

Mr. Newman asked if the structure on the south side of the house fell within the purview of the Board this evening.

Mr. Gruba said the structure on the south side of the house was not part of the variance request this evening and that staff had become aware that it had been constructed without obtaining any permits.

Mr. Newman questioned if a variance would have been required for the structure.

Mr. Gruba said he didn't feel a variance would have been needed for the structure, but without knowing any of the dimensions of the structure, he didn't know whether a permit would have been required.

Mr. Newman said the Board was considering a variance request for the front porch this evening and that the structure on the south side of the house wasn't being considered this evening.

Mr. Ellis noted that after the porch construction was started, he submitted a building permit application to the Township and informed them that if there was something wrong, he would correct it. He said the Township returned his application and check and said to make an appointment. Mr. Ellis claimed that he did make an appointment, but that the Township did not follow up on the appointment.

Ms. Laforet noted that Mr. Ellis had indicated that Mulder Builders had built the porch.

Mr. Ellis said that he and his son started construction themselves on the front porch.

Ms. Milan said the structure on the south side of the house was the reason why they were present this evening to voice their concerns to the Board about the porch. Ms. Milan noted that there was raw wood showing on the structure that had not been painted and the plywood on top of the structure was warping due to the lack of shingles.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF JULY 8, 2014 P. 6**

Mr. Ellis said that the awning was made of a special kind of wood that needed to cure for one year before painting it. He noted that it was always his intention to paint and shingle the awning.

Mr. Arking said he understood the residents concerns about the covered structure on the south side of the home, but he noted that the Board was considering the front porch this evening. He encouraged the neighbors to meet to discuss their concerns.

Mr. Leatherbery felt the Township needed to enforce the rules and either grant or deny the variance request. He said if the porch wasn't going to be covered, he felt it would become more of a hazard in the winter months than the old steps were. Mr. Leatherbery said just from what he had seen in the past, the porch wouldn't get shoveled in the winter. He noted that he took care of his property and had just spent several thousand dollars in landscaping.

### **MOTION BY ARKING, SECONDED BY BARNHART, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 5-0.**

Mr. Arking felt there could be an ADA exemption, but there was nothing that necessarily ruled out a deck or porch that the applicant constructed couldn't be built to ADA standards within the existing setback requirements. He didn't feel the applicant had to have a variance in order to build a ramp.

Ms. Laforet said that was one of her questions as well and she questioned if it was physically possible to construct a ramp and still be in compliance with the Township's front setback requirements.

Mr. Gruba noted that Section 3.7.0 of the Zoning Ordinance states that physical structures related to barrier free access, such as ramps, were not required to comply with the Township's setback requirements.

Ms. Laforet said she was concerned that the applicant didn't check with the Township before they started construction on the porch, as well as when the structure on the south side of the house was constructed. Ms. Laforet was concerned that precedence could be set and that residents would start thinking they could start projects and then come to the Township after the fact. Ms. Laforet questioned if the Township would have any jurisdiction if a ramp was constructed.

Mr. Gruba said as long as the ramp met the ADA standards, a permit would not be needed from the Township. He noted that the Township's Building Official would inspect the ramp to ensure that it complied with ADA standards, but he didn't know whether the applicant had sufficient room to meet the required 1 to 12 slope.

## **ZONING BOARD OF APPEALS REGULAR MEETING OF JULY 8, 2014 P. 7**

Mr. Arking asked if there was an occupant of the home that needed a ramp.

Ms. Ellis noted that she is visually impaired and that there is a diabetic that lives in the house now.

Mr. Newman said he was concerned that a site plan was not submitted with the application and that the Board would be basing their decision on a picture and what the applicant's needs were. He suggested that the Board table the request until the applicant submitted a site plan so that the Board could make an informed decision.

Mr. Barnhart said he would be in favor of tabling the request pending a site plan.

Mr. Arking said he could support a tabling if it was date specific when a site plan would be submitted and for staff to obtain a legal opinion from the Township's Attorney as to how the ADA requirements related to this case.

**MOTION BY BARNHART, SECONDED BY ARKING, THAT CASE NO. V-14-3-13 BE TABLED UNTIL THE AUGUST 12<sup>TH</sup> ZONING BOARD OF APPEALS MEETING IN ORDER FOR THE APPLICANT TO SUBMIT STAFF A SITE PLAN BY JULY 15<sup>TH</sup> IN ORDER TO PROVIDE STAFF SUFFICIENT TIME TO OBTAIN AN OPINION FROM THE TOWNSHIP'S ATTORNEY REGARDING HANDICAP ASSESSABILITY.**

**ROLL CALL VOTE. CARRIED 5-0.**

VIII. OTHER BUSINESS – None

IX. STAFF COMMENTS

X. BOARD COMMENTS

Mr. Arking said while the structure on the south side of the Ellis' house wasn't the subject of discussion this evening, he would expect that staff would be looking into this matter and he urged the Ellis' to work with staff on this matter.

XI. ADJOURNMENT

Vice Chairman Newman adjourned the meeting at 6:49 p.m.

DELTA CHARTER TOWNSHIP

Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink